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In re Application of
KEMP, Stephen et al.
Application No.: 10/538,664
PCT No.: PCT/GB02/05588
Int. Filing Date: 10 December 2002
Priority Date: None
Attorney's Docket No.: 86769-0020
For: Data Model Development Tool

DECISION ON

RENEWED PETITION

UNDER 37 CFR 1.47(a)

This is a decision on applicants' renewed petition under 37 CFR 1.47(a) filed in the United States Patent and Trademark Office on 25 May 2007, to permit the applicants to file the above-captioned application on behalf of the non-signing inventor, David Hillewaere.

BACKGROUND

On 10 December 2002, applicants filed international application PCT/GB02/05588 and did not claim an earlier priority date. The thirty-month for paying the basic national fee in the United States expired at midnight on 10 June 2005.

On 10 June 2005, applicants filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, *inter alia*, the requisite basic national fee.

On 14 April 2006, the United States Designated/Elected Office mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that an oath or declaration and the surcharge for late filing of the oath or declaration were required.

On 14 November 2006, applicants filed a "Response To Notice To File Missing Parts" including, *inter alia*, a declaration accompanied by a petition under 37 CFR 1.47(a) to permit the applicants to file the above-captioned application on behalf of the non-signing inventors, Stephen Kemp and David Hillewaere.

On 25 January 2007, the Office mailed a "Decision On Petition under 37 CFR 1.47(a)" dismissing applicants' petition without prejudice. Specifically, the Decision stated that the evidence submitted was not sufficient to show that the non-signing inventors have refused to execute the declaration or cannot be located after diligent effort. Furthermore, the Decision indicated that the submitted declaration did not comply with 37 CFR 1.497(a)-(b) because the name of inventor "Katherine A. MATHER" has been changed to "Katherine A. NICHOLSON." The Decision advised applicants to file a petition under 37 CFR 1.182 including an affidavit signed with both names explaining the circumstances by which the name change occurred.

On 25 May 2007, applicants filed a new declaration accompanied by the instant renewed petition under 37 CFR 1.47(a) to permit the applicants to file the above-captioned application on behalf of the non-signing inventor, David Hillewaere.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(g), (2) a statement of the last known address of the missing inventor, (3) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, and (4) an oath or declaration by each applicant on his or her own behalf and on behalf of the non-signing joint inventor.

As to items (1) and (2), applicants have submitted the correct fee of \$200.00 under 37 CFR 1.17(g) and a statement of the last known address of the non-signing inventor.

With regard to item (3), the supplied evidence is sufficient to show that non-signing inventor David Hillewaere was presented with a complete copy of the application papers. Specifically, the declaration by Mr. David Nelson (person having first-hand knowledge of presenting the complete application papers to non-signing inventor David Hillewaere) (see Attachment A) and FedEx Tracking Results (see Attachment B), together, show that a complete copy of the application papers were presented to non-signing inventor David Hillewaere. Furthermore, the Internet telephone directory search (see Attachment C) for non-signing inventor David Hillewaere, together with the FedEx Tracking Results (see Attachment B), show that non-signing inventor David Hillewaere is unreachable "after diligent effort." Hence, item (3) has been satisfied.

With regard to item (4), although applicants have submitted a declaration executed by the other cooperating inventor and containing an unsigned signature block for the non-signing inventor, this declaration does not with 37 CFR 1.497(a)-(b) because the name of inventor "Katherine A. MATHER" has been changed to "Katherine A. NICHOLSON." As stated in the Decision mailed 25 January 2007, applicants need to file a petition under 37 CFR 1.182 to correct the name of this inventor before the declaration can be accepted. For such a petition to be grantable, MPEP §605.04(c) states that, "the petition must include an appropriate petition fee and a statement signed by the inventor setting forth both names and the procedure whereby the change of name was effected, or a copy of the court order." Hence, item (4) has not been satisfied.

CONCLUSION

Applicants' renewed petition filed under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required.



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